

WT 05-169

<b>FCC 603</b>	<b>FCC Wireless Telecommunications Bureau</b> <b>Application for Assignments of Authorization</b> <b>and Transfers of Control</b>  DOCKET FILE COPY ORIGINAL	Approved by OMB 3060 - 0800 See instructions for public burden estimate Submitted 03/31/2005 at 06:50PM  File Number: <b>0001978782</b>
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1) Application Purpose: **Amendment**

2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC.

File Number:  
**0001978782**

2b) File numbers of related pending applications currently on file with the FCC:

**Type of Transaction**

3a) Is this a <i>pro forma</i> assignment of authorization or transfer of control? <b>No</b>
3b) If the answer to Item 3a is 'Yes', is this a notification of a <i>pro forma</i> transaction being filed under the Commission's forbearance procedures for telecommunications licenses?
4) For assignment of authorization only, is this a partition and/or disaggregation?
5a) Does this filing request a waiver of the Commission rules? If 'Yes', attach an exhibit providing the rule numbers and explaining circumstances. <b>Yes</b>
5b) If a feeable waiver request is attached, multiply the number of stations (call signs) times the number of rule sections and enter the result. <b>1</b>
6) Are attachments being filed with this application? <b>Yes</b>
7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor (e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? <b>No</b>
7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? <b>No</b>

**Transaction Information**

8) How will assignment of authorization or transfer of control be accomplished? <b>Sale or other assignment or transfer of stock</b> If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc.
9) The assignment of authorization or transfer of control of license is: <b>Voluntary</b>

**Licensee/Assignor Information**

10) FCC Registration Number (FRN): <b>0003475233</b>			
11) First Name (if individual):	MI:	Last Name:	Suffix:
12) Entity Name (if not an individual): <b>Urban Comm-North Carolina, Inc.</b>			
13) Attention To: <b>James L. Winston</b>			
14) P.O. Box:	And / Or	15) Street Address: <b>1155 Connecticut Avenue N.W., Sixth Floor</b>	
16) City: <b>Washington</b>	17) State: <b>DC</b>	18) Zip Code: <b>20036</b>	

19) Telephone Number: (202)861-0870	20) FAX Number: (202)429-0657
21) E-Mail Address: jwinston@rwdhc.com	

**22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)**

<b>Race:</b>	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
<b>Ethnicity:</b>	Hispanic or Latino:	Not Hispanic or Latino:			
<b>Gender:</b>	Female:	Male:			

**Transferor Information (for transfers of control only)**

23) FCC Registration Number (FRN): 0012327326			
24) First Name (if individual):	MI:	Last Name:	Suffix:
25) Entity Name (if not an individual): Urban Communicators PCS Limited Partnership			
26) P.O. Box:	And / Or	27) Street Address: 1155 Connecticut Avenue, N.W., Sixth Floor	
28) City: Washington	29) State: DC	30) Zip Code: 20036	
31) Telephone Number: (202)861-0870	32) FAX Number: (202)429-0657		
33) E-Mail Address: jwinston@rwdhc.com			

**Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)**

34) First Name:	MI:	Last Name:	Suffix:
35) Company Name:			
36) P.O. Box:	And / Or	37) Street Address:	
38) City:	39) State:	40) Zip Code:	
41) Telephone Number:	42) FAX Number:		
43) E-Mail Address:			

**Assignee/Transferee Information**

44) The Assignee is a(n): Corporation			
45) FCC Registration Number (FRN): 0003246642			
46) First Name (if individual):	MI:	Last Name:	Suffix:
47) Entity Name (if other than individual): Triton PCS, Inc.			
48) Name of Real Party in Interest:			49) TIN:
50) Attention To: Dan Hopkins			
51) P.O. Box:	And / Or	52) Street Address: 1100 Cassatt Road	
53) City: Berwyn	54) State: PA	55) Zip Code: 19312	
56) Telephone Number: (610)722-4447	57) FAX Number:		
58) E-Mail Address:			

**Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)**

59) First Name: Michele	MI: C	Last Name: Farquhar	Suffix:
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60) Company Name: <b>Hogan &amp; Hartson L.L.P.</b>		
61) P.O. Box:	And / Or	62) Street Address: <b>555 Thirteenth Street, NW</b>
63) City: <b>Washington</b>	64) State: <b>DC</b>	65) Zip Code: <b>20004-1109</b>
66) Telephone Number: <b>(202)637-5663</b>		67) FAX Number: <b>(202)637-5910</b>
68) E-Mail Address: <b>MCFarquhar@HHLaw.com</b>		

**Alien Ownership Questions**

69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?	<b>No</b>
70) Is the Assignee or Transferee an alien or the representative of an alien?	<b>No</b>
71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?	<b>No</b>
72) Is the Assignee or Transferee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	<b>No</b>
73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? If 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control.	<b>No</b>

**Basic Qualification Questions**

74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>
75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>
76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>
77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>

**78) Race, Ethnicity, Gender of Assignee/Transferee (Optional)**

<b>Race:</b>	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
<b>Ethnicity:</b>	Hispanic or Latino:	Not Hispanic or Latino:			
<b>Gender:</b>	Female:	Male:			

**Fee Status**

79) Is the applicant exempt from FCC application fees? <b>No</b>
80) Is the applicant exempt from FCC regulatory fees? <b>Yes</b>

**Assignor/Transferor Certification Statements**

1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rcd. 6293(1998).			
2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.			
Typed or Printed Name of Party Authorized to Sign			
81) First Name: <b>Edward</b>	MI: <b>L</b>	Last Name: <b>Kaywork</b>	Suffix:
82) Title: <b>President</b>			
Signature: <b>Edward L Kaywork</b>		83) Date: <b>03/31/05</b>	

### Assignee/Transferee Certification Statements

1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rcd. 6293 (1998).
2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.
3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule.* *If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.
4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accrued by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.
5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.
7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's rules.

### Typed or Printed Name of Party Authorized to Sign

84) First Name: <b>Dan</b>	MI: <b>E</b>	Last Name: <b>Hopkins</b>	Suffix:
85) Title: <b>Sr. VP of Finance and Treasurer</b>			
Signature: <b>Dan E Hopkins</b>		86) Date: <b>03/31/05</b>	
<b>WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).</b>			

### Authorizations To Be Assigned or Transferred

(only)

**2) Gross Revenues and Total Assets Information** (if required) (for assignments of authorization

Is the Assignee claiming the same category or a smaller category of eligibility for installment payments as the Assignor (as determined by the applicable rules governing the licenses issued to the Assignor)? If 'Yes', is the Assignee applying for installment payments?
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**1) Assignee Eligibility for Installment Payments** (for assignments of authorization only)**Assignments of Authorization**

<b>FCC Form 603</b> <b>Schedule A</b>	<b>Schedule for Assignments of Authorization</b> <b>and Transfers of Control in Auctioned Services</b>	Approved by OMB 3060 - 0800 See instructions for public burden estimate
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87) Call Sign	KNLF372	CW	Yes	95) Indicate
88) Radio Service	KNLF373	CW	Yes	
	KNLF375	CW	Yes	
	KNLF376	CW	Yes	
	KNLF378	CW	Yes	
	KNLF379	CW	Yes	
	KNLF380	CW	Yes	
	KNLG239	CW	Yes	
	KNLF707	CW	Yes	
	KNLF708	CW	Yes	
	KNLF709	CW	Yes	
	KNLF710	CW	Yes	
	KNLF711	CW	Yes	
	KNLF712	CW	Yes	
	KNLF713	CW	Yes	
	KNLF714	CW	Yes	
	KNLF715	CW	Yes	
	KNLF716	CW	Yes	
	KNLF717	CW	Yes	
	KNLF718	CW	Yes	

Refer to applicable auction rules for method to determine required gross revenues and total assets information

Year 1 Gross Revenues (current)	Year 2 Gross Revenues	Year 3 Gross Revenues	Total Assets:
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### 3) Certification Statements

#### For Assignees Claiming Eligibility as an Entrepreneur Under the General Rule

Assignee certifies that they are eligible to obtain the licenses for which they apply.

#### For Assignees Claiming Eligibility as a Publicly Traded Corporation

Assignee certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.

#### For Assignees Claiming Eligibility Using a Control Group Structure

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

#### For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

#### For Assignees Claiming Eligibility as a Rural Telephone Company

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

### Transfers of Control

#### 4) Licensee Eligibility (for transfers of control only)

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?

Yes

If 'Yes', the new category of eligibility of the licensee is: **See Exhibit 1**

#### Certification Statement for Transferees

Transferee certifies that the answers provided in Item 4 are true and correct.

The copy resulting from Print Preview is intended to be used as a reference copy only and MAY NOT be submitted to the FCC as an application for manual filing.

### Attachment List

Attachment Type	Date	Description	Contents
Other	02/14/05	Exhibit 2, Triton Spectrum Overlaps	<a href="#">0179949685759218559357434.pdf</a>
Other	02/14/05	Exhibit 3, Wireless Competitors	<a href="#">0179949695759218559357434.pdf</a>

Other	02/16/05	Exhibit 4, Urban Comm, Competitive Impact Statement	<a href="#"><u>0179955995759218559357434.pdf</u></a>
Waiver	03/21/05	Exhibit 1, Request for Waiver	<a href="#"><u>0180027855759218559357434.pdf</u></a>
Other	03/30/05	Exhibit 5, Settlement Agreement Approval	<a href="#"><u>0180052985759218559357434.pdf</u></a>
Other	03/30/05	Exhibit 6, Court Approval of Transfer of Control	<a href="#"><u>0180052995759218559357434.pdf</u></a>
Other	03/30/05	EXhibit 7, Settlement Agreement	<a href="#"><u>0180053005759218559357434.pdf</u></a>

**DESCRIPTION OF TRANSACTION,  
PUBLIC INTEREST STATEMENT  
AND  
REQUEST FOR WAIVER  
REVISED**

**I. INTRODUCTION**

Urban Comm-North Carolina, Inc., FRN 0003475233 ("Urban NC"), licensee of 10 C-Block 30 MHz PCS licenses and 13 F-Block 10 MHz PCS licenses, and Triton PCS, Inc., FRN 0003246642 ("Triton"), (Urban NC and Triton together are the "Applicants") hereby seek Commission consent to the transfer of control of Urban NC to Triton. The steps associated with the instant transaction are set forth below.

First, Urban NC is filing a Form 603 application seeking consent to a *pro forma* transfer of control of Urban NC's immediate parent, Urban Comm-Mid-Atlantic, Inc. ("Urban MA"). Pursuant to that application, Urban MA will be merged with and into Urban NC.

Second, Urban NC is filing a Form 603 application seeking consent to transfer control of Urban NC to Triton, and resulting in certain licenses currently held by Urban NC to be transferred to the control of Triton (the "Licenses"). The Licenses at issue are as follows:

<u>Market</u>	<u>Call Sign</u>	<u>Spectrum Amount (MHz)</u>	<u>PCS Block</u>	<u>Frequencies</u>
Asheville-Hendersonville, NC	KNLH707	10	F	1890-1895/1970-1975 MHz
Charleston, SC	KNLH708	10	F	1890-1895/1970-1975 MHz
Charlottesville, VA	KNLH709	10	F	1890-1895/1970-1975 MHz
Florence, SC	KNLH710	10	F	1890-1895/1970-1975 MHz
Fredericksburg, VA	KNLH711	10	F	1890-1895/1970-1975 MHz
Goldsboro/Kinston, NC	KNLF375	10	C-3*	1895-1900/1975-1980 MHz
Greenville/Washington, NC	KNLF376	10	C-3*	1895-1900/1975-1980 MHz
Harrisonburg, VA	KNLH712	10	F	1890-1895/1970-1975 MHz
Martinsville, VA	KNLH713	10	F	1890-1895/1970-1975 MHz
Myrtle Beach, SC	KNLH714	10	F	1890-1895/1970-1975 MHz
New Bern, NC	KNLF378	10	C-3*	1895-1900/1975-1980 MHz
Orangeburg, SC	KNLH715	10	F	1890-1895/1970-1975 MHz
Richmond-Petersburg, VA	KNLG239	10	F	1890-1895/1970-1975 MHz
Roanoke, VA	KNLH716	10	F	1890-1895/1970-1975 MHz
Roanoke Rapids, NC	KNLF379	10	C-3*	1895-1900/1975-1980 MHz
Rocky Mount-Wilson, NC	KNLF380	10	C-3*	1895-1900/1975-1980 MHz
Staunton-Waynesboro, VA	KNLH717	10	F	1890-1895/1970-1975 MHz
Sumter, SC	KNLH718	10	F	1890-1895/1970-1975 MHz



<u>Market</u>	<u>Call Sign</u>	<u>Spectrum Amount (MHz)</u>	<u>PCS Block</u>	<u>Frequencies</u>
Burlington, NC	KNLF373	20	C-3, C-4*	1895-1900/1975-1980 MHz 1900-1905/1980-1985 MHz
Raleigh-Durham, NC	KNLF372	20	C-3, C-4*	1895-1900/1975-1980 MHz 1900-1905/1980-1985 MHz

\* The seven licenses marked by an asterisk (\*) are the disaggregated licenses.

Finally, Urban NC filed an assignment application seeking consent to assign the remaining licenses currently held by Urban NC; *i.e.*, those licenses not being transferred to Triton, to Celco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (the "Excluded Licenses"). The transaction contemplates that, prior to the consummation of the transfer of control of Urban NC to Triton, the Excluded Licenses shall have been assigned to Verizon Wireless, such that the licenses still held by Urban NC at the time of consummation of the instant transaction shall be only the Licenses, and shall not include the Excluded Licenses. File No. 0001994620, January 18, 2005.

In support of this request for consent to the proposed transaction, the Applicants submit the following:

## II. DESCRIPTION OF THE APPLICANTS

### A. Urban NC

Urban NC holds 10 C-Block PCS licenses obtained in FCC Auction No. 5, and 13 F-Block PCS licenses obtained in FCC Auction No. 11. Urban NC is a wholly owned subsidiary of Urban MA, which is wholly owned by Urban Communicators PCS Limited Partnership ("Urban LP"). On October 28, 1998, Urban NC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, and Urban MA and Urban LP initiated similar proceedings shortly thereafter.<sup>1</sup> Those Bankruptcy Court proceedings are still pending, and the transactions contemplated by this application

<sup>1</sup> Urban NC, Urban MA and Urban LP (collectively, the "Debtors") are debtors and debtors-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.*, as amended (the "Bankruptcy Code"), having commenced cases under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on October 28 and November 5, 1998, respectively (collectively, the "Petition Date"), and such Chapter 11 cases are being jointly administered under Chapter 11 case *In re Urban Communicators PCS Limited Partnership*, Nos. 98-B-47996, 98-B-47997 and 98-B-10086 (REG) (the "Chapter 11 Cases").

are part of a plan to successfully terminate those proceedings.

**B. Triton**

Triton's affiliate, Triton PCS License Company L.L.C. (FRN 0003246055) ("Triton PCS") is an FCC licensee in good standing, and its qualifications to hold Commission licenses are a matter of public record. In fact, Triton recently updated its FCC Form 602 to reflect its current ownership. As the Commission is aware, Triton has the technical and operational expertise to hold and control FCC licenses, is financially qualified and has adequate resources to undertake and consummate the instant transaction.

**III. DESCRIPTION OF THE TRANSACTION**

The proposed transaction is set forth in a Stock Purchase Agreement and Assignment Agreement (collectively referred to as the "SPA"), both dated as of November 30, 2004. Prior to execution, the SPA was submitted to the Bankruptcy Court by the Debtors and was approved by the Bankruptcy Court in an order dated December 1, 2004 (the "Interim Relief Order"). The U.S. Department of Justice (the "DOJ") and the Commission reviewed the SPA prior to its submission to the Bankruptcy Court, and each supported the Debtors' motion for approval of the SPA.

**A. The Urban Restructuring**

As noted above, pursuant to the SPA, and subject to all appropriate Commission and Bankruptcy Court approvals, the transaction requires that Urban MA merge with and into Urban NC (the "Urban Restructuring"). Accordingly, Urban has separately filed a Form 603 application seeking consent to the *pro forma* transfer of control of Urban MA to Urban NC. The Applicants respectfully request prompt action on this aspect of the transaction.

**B. Transfer of Control of Urban NC to Triton**

Also pursuant to the SPA, and subject to all appropriate Commission and Bankruptcy Court approvals, after consummation of the Urban Restructuring, the transfer of control of Urban NC to Triton requires that, at closing, Urban LP shall issue 100 shares of newly issued common stock of Urban NC to Triton (the "New Common Shares"), which shall constitute all of the then-issued and outstanding shares of Urban NC's capital stock. Consideration for the transfer of control of Urban to Triton shall be \$113,000,000.00 (the "Purchase Price").

A portion of the Purchase Price shall be paid by Triton directly to the Commission (or to the U.S. Government as directed by the Commission) in full payment and settlement of any and all indebtedness of Urban NC to the Commission related to principal, interest, and late fees that may be due with respect to the Licenses (the "FCC Direct Payment"). On March 14, 2005, Urban NC and

the Commission entered into a Settlement Agreement that: (1) established the amount of the FCC Direct Payment, (2) resolved all issues and claims in the Bankruptcy Court proceedings regarding the Licenses, (3) permitted a transfer of control of the Licenses to Triton (while also allowing assignment of the Excluded Licenses to another prospective assignee) free and clear of all claims, and (4) ensures that Triton may use the Licenses to provide PCS service to the public in a timely manner.<sup>2</sup>

On March 13, 2005, Urban NC filed an application with the Bankruptcy Court requesting approval of the Settlement Agreement.<sup>3</sup> The Application for Approval points out that, on December 1, 2004, the Bankruptcy Court entered an interim order approving the Triton transaction, and on January 24, 2005, the Bankruptcy Court entered an order authorizing the Verizon transaction.<sup>4</sup> By order dated March 15, 2005, the Bankruptcy Court scheduled a hearing on the Application for Approval for March 24, 2005.

Each of the Licenses was granted more than five years ago, and the relevant five-year construction requirements set forth in Section 24.203 of the Commission's rules have been satisfied with respect to each of the Licenses. On November 16, 2004, Urban NC filed notification of construction applications for each of the Licenses. Urban NC anticipates that the Commission will expeditiously grant the notifications.<sup>5</sup> Upon such grant, the transfer of control of the Licenses will be unrestricted.

#### **IV. COMMISSION APPROVAL OF THE PROPOSED TRANSACTION IS IN THE**

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<sup>2</sup> Settlement Agreement, dated March 14, 2005, by and between Urban Communicators PCS Limited Partnership, Debtor-in-Possession, Urban Comm-Mid-Atlantic, Inc. Debtor-In-Possession, and Urban Comm-North Carolina, Inc., Debtor-In-Possession, and the Federal Communications Commission ("Settlement Agreement").

<sup>3</sup> Application for an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Authorizing and Approving the Terms and Conditions of Debtors' Proposed Settlement Agreement with the Federal Communications Commission, Chapter 11 Case Nos. 98-B-47996, et al., March 13, 2005 ("Application for Approval").

<sup>4</sup> Application for Approval at 8-9.

<sup>5</sup> With respect to the disaggregated C-Block PCS spectrum for which a ten-year benchmark is also applicable, the disaggregatee will be responsible for meeting the ten-year construction benchmark for the disaggregated spectrum. See 47 C.F.R. § 24.203(a), 24.714(e)(2). The disaggregator thus remains responsible for meeting the ten-year construction benchmark for the spectrum it retains. The Applicants have chosen Option 3 in response to Question 7 of Schedule B to represent this scenario. The Applicants request that the Commission issue a new call sign for each license comprising disaggregated C-Block spectrum.

## **PUBLIC INTEREST**

### **A. Background**

Pursuant to Section 310(d) of the Communications Act of 1934, as amended, the Licenses may not be assigned unless the Commission finds "that the public interest, convenience and necessity will be served thereby."<sup>6</sup> In evaluating transfer of control applications under Section 310(d), the Commission must determine that the proposed assignee is qualified to hold Commission licenses. As noted earlier, Triton's affiliate, Triton PCS is an FCC licensee in good standing, and its qualifications to hold Commission licenses are a matter of public record. As the Commission is aware, Triton has the technical and operational expertise to hold and control FCC licenses, is financially qualified and has adequate resources to undertake and consummate the instant transaction. Triton recently updated its FCC Form 602 to reflect its current ownership. Therefore, there is no question that Triton possesses the qualifications needed to control the Licenses.

### **B. The Proposed Transaction Would Further the Public Interest and Benefit Competition**

Commission approval of the proposed transaction will promote the public interest and benefit competition in a number of ways. First, by consenting to the proposed transfer of control, the Commission will allow spectrum that has been the subject of bankruptcy litigation for over six years to be quickly put into general commercial use to benefit wireless consumers.<sup>7</sup> Second, in the markets in which Triton currently holds no spectrum, the proposed transaction will expand Triton's competitive footprint and add a competitor to the market, giving consumers increased choice among wireless competitors and access to the wide array of state-of-the-art voice and data products and services that Triton offers. Third, in markets where Triton currently offers service, the proposed transaction will allow Triton to expand its network capacity and services. By easing spectrum constraints in these markets, Triton will be able to achieve operational efficiencies and offer a more robust range of services to meet the needs of new and existing subscribers.<sup>8</sup> In this regard, consent to the transaction will improve upon Triton's ability to compete effectively against nationwide wireless carriers. Similarly,

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<sup>6</sup> 47 U.S.C. § 310(d).

<sup>7</sup> By permitting the Applicants to consummate the court-approved bankruptcy sale for the benefit of creditors, consent to the instant applications will further the "equitable purposes of the Federal Bankruptcy Act." See *Space Station System Licensee, Inc. and Iridium Constellation LLC*, 17 FCC Rcd 2271, 2289 ¶ 44 (IB 2002).

<sup>8</sup> See *Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless*, 18 FCC Rcd 6490, 6492-93 n. 19 (WTB/CWD 2003).

consent to the transaction will facilitate Triton's ability to provide advanced wireless services in the underserved rural areas at issue here. Finally, we note that this transaction does not take spectrum away from any competing carriers.

Although the transaction would create overlaps in certain markets, the amount of commercial wireless spectrum proposed to be held by Triton post-transaction is well within Commission precedent.<sup>9</sup> First, with respect to South Carolina, Triton proposes to hold 40 MHz of spectrum in four markets (Charleston, Florence, Orangeburg, and Sumter). In the Myrtle Beach market, Triton proposes to hold 65 MHz of spectrum. Second, with respect to North Carolina, Triton proposes to hold 30 MHz of spectrum in five markets (Goldsboro-Kinston, Greenville-Washington, New Bern, Roanoke Rapids, and Rocky Mount-Wilson), and to hold 40 MHz of spectrum in the Asheville-Hendersonville market. Triton proposes to ultimately hold 40 MHz of spectrum in two markets (Burlington and Raleigh-Durham); however, these holdings would not be effectuated until the consummation of a separate transaction currently pending with the Commission.<sup>10</sup>

Prior to its elimination, the Commission's spectrum aggregation limit, 47 C.F.R. § 20.6, permitted carriers to hold 55 MHz of commercial wireless spectrum in a given market. Therefore, the proposed aggregations of 30 MHz and 40 MHz do not come close to implicating the former spectrum aggregation limit. With respect to the Myrtle Beach market, we note that the Commission recently permitted Cingular Wireless to hold 80 MHz of commercial wireless spectrum in certain markets.<sup>11</sup> Accordingly, the proposed aggregation of 65 MHz in this market does not implicate the more recent Commission precedent.

The Applicants respectfully request that the Commission grant the instant application and allow Triton to control the Licenses. For the reasons set forth here, consent to this application would further the public interest and benefit competition.

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<sup>9</sup> We note that Triton holds an indirect, non-attributable, non-controlling 39.0 percent equity and voting interest in Lafayette Communications Company, LLC (FRN 0005374434) ("Lafayette"), an entity that intends to participate in broadband PCS Auction No. 58. Lafayette will shortly hold no commercial wireless spectrum. See File No. 0001892336, whereby the Commission issued consent to the assignment of broadband PCS license WPOK621 on Dec. 1, 2004. The parties anticipate consummating this transaction in the near term, and will so notify the Commission.

<sup>10</sup> See File No. 0001963881.

<sup>11</sup> Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion & Order*, \_\_\_ FCC Rcd \_\_\_, FCC 04-255 (rel. Oct. 26, 2004) at ¶ 141.

**V. REQUEST FOR WAIVER OF THE PAYMENT PROVISIONS OF SECTIONS 24.714 AND 1.2111 OF THE COMMISSION'S RULES AND THE TIMING PROVISIONS OF SECTION 24.714**

**A. The Waiver Requests**

In the transaction at hand, a significant portion of the Purchase Price will be paid to the Commission in full satisfaction of Urban NC's obligations in the form of the FCC Direct Payment. The amount of the FCC Direct Payment has been negotiated by Urban NC and the Commission in the Settlement Agreement to be \$49,937,276.86, plus interest accruing from and including January 1, 2005.<sup>12</sup> This amount has been determined through arms'-length negotiations between the Commission, DOJ and Urban NC. As such, the FCC Direct Payment reflects a negotiated settlement between the Commission and Urban NC as to claims regarding the Licenses.

For transfers of spectrum licenses, Section 1.2111 of the Commission's rules places the obligation on the assignor (Urban NC) to ensure that the Commission receives full payment.<sup>13</sup> In the context of the proposed transaction, the Commission's rules therefore place the responsibility of payment for the transfer of the Licenses on Urban NC and, to the extent that the FCC Direct Payment does not satisfy Urban NC's obligation, Urban NC would need a waiver of the rule in order to consummate the transaction described in the SPA and approved by the Bankruptcy Court.

The payment responsibility for disaggregation of broadband PCS spectrum, however, operates in a different manner. Under Section 24.714(c) of the Commission's rules, the outstanding balance owed by the licensee is apportioned between the licensee (Urban NC) and the disaggregatee (Triton), with each party being responsible for its proportionate share.<sup>14</sup> Additionally, Section 24.714(c)(2)(ii) requires that the disaggregatee render its entire *pro rata* payment within thirty days of a conditional

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<sup>12</sup> The interest payment is subject to additional terms set forth in the Settlement Agreement.

<sup>13</sup> 47 C.F.R. § 1.2111(c)(1) ("If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval."). See also Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to subsidiaries of Cingular Wireless LLC, Memorandum Opinion & Order, 19 FCC Rcd 2570 (2004) ("*NextWave-Cingular*") at ¶ 36.

<sup>14</sup> 47 C.F.R. § 24.714(c). See also *NextWave-Cingular* ¶ 37.

grant by the Commission.<sup>15</sup> Thus, for the seven licenses being disaggregated from Urban NC to Triton, the rules place the responsibility of payment of its proportionate share of the balance owed on Triton, and to the extent that the FCC Direct Payment does not satisfy Triton's obligation, it would need a waiver of the rule in order to consummate the transaction described in the SPA.<sup>16</sup> To the extent the rule requires this payment to be made within thirty days of a conditional grant, the Applicants may also need a waiver of this timing requirement in order to permit the remittance of the FCC Direct Payment as described in the SPA.<sup>17</sup>

Because the Commission has found that Section 24.714 does not anticipate that when a license is being disaggregated, the disaggregatee can be responsible for more than its *pro rata* portion of the unpaid principal and two quarters of interest and late fees,<sup>18</sup> the Applicants respectfully request that the Commission apportion to Triton its proportionate share of the two quarters of accrued and unpaid interest and any late fees as well as its proportionate share of the entire outstanding principal obligation owed.<sup>19</sup> Under this scenario, therefore, all interest and any late fees owed for the disaggregated Licenses above this amount, if any, would remain the obligation of Urban NC, and the Applicants ask that it would be included pursuant to a limited waiver of Section 24.714 requested by Urban NC.<sup>20</sup>

In the instant transaction, this results in an apportionment to Triton of a payment obligation of two quarters of accrued interest and unpaid late fees and a proportionate share of outstanding principal on the seven disaggregated licenses. The Applicants recognize that the Commission must make its own calculations regarding the adequacy of the FCC Direct Payment with respect to the amounts owed by Triton and Urban NC for the various obligations to which the FCC Direct Payment is to be apportioned. However, the Applicants submit that applying the FCC Direct Payment to Triton's obligation fully satisfies Triton's responsibilities, and Triton therefore does not require a waiver of the full payment provisions of Section 24.714. However, to the extent the Commission may calculate the required payment for the disaggregated licenses to be greater than the FCC Direct Payment, the Applicants request a limited waiver of Section 24.714 to the extent the FCC Direct Payment may be less than the required payment.

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<sup>15</sup> 47 C.F.R. § 24.714(c)(2)(ii). See also *NextWave-Cingular* ¶ 37.

<sup>16</sup> *NextWave-Cingular* ¶ 37.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* ¶ 38.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

With respect to Urban NC's obligations under Section 1.2111, the amount of the FCC Direct Payment to be apportioned to Urban NC's obligations is the remainder left after subtracting the maximum amount that Triton could owe for the disaggregated C Block licenses. Urban NC believes that the remainder is sufficient to fully satisfy Urban NC's outstanding principal obligation under Section 1.2111 for the transfer of the full C Block PCS licenses to Triton. However, Urban NC believes that what remains of the FCC Direct Payment (*i.e.*, after subtracting both the maximum amount Triton could owe for the disaggregated licenses as well as the principal obligation Urban NC owes for the transfer of the full C Block licenses) may not be sufficient to fully pay the accrued interest and any late fees Urban NC owes under Section 1.2111. Thus, Urban NC requests a limited waiver of the payment provisions of Section 1.2111 to the extent it may be required as to the principal amount that Urban NC owes, and also requests a limited waiver to the extent it may be required with respect to the accrued interest and any late fees.<sup>21</sup>

With respect to the contemplated timing of the FCC Direct Payment, under the SPA, Triton's obligation to consummate the transaction is conditioned, among other things, upon the Commission's approval becoming a Final Order (as defined in the SPA). Because it is impossible for the Commission's approval to become a Final Order within 30 days of its issuance, the Applicants request that the Commission expressly waive the 30-day requirement of Section 24.714(c)(2)(ii) to allow for the FCC Direct Payment to be made on the date of consummation, as contemplated by the SPA.<sup>22</sup>

Grant of the requested limited waivers is consistent with the *NextWave-Cingular* ruling, because, in this instance, as in that case, the Commission is again receiving a significant payment that will fully satisfy the Applicants' obligations to pay the principal amount owed, although not all of the interest and late fees owed.<sup>23</sup> Moreover, this is a situation in which the proffered payment has been deemed acceptable by the DOJ pursuant to a negotiated agreement with Urban NC.<sup>24</sup> Finally, the Commission has expressly determined that such a waiver "is entirely within our discretion, and consistent with our obligations to balance various competing public interest considerations under the Communications Act ..."<sup>25</sup>

Given this set of circumstances, therefore, the Applicants respectfully request that, to the extent necessary, the Commission grant a limited waiver of the payment provisions of Sections 24.714 and

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<sup>21</sup> See, e.g., *NextWave-Cingular* ¶¶ 39-40.

<sup>22</sup> *Id.*

<sup>23</sup> *NextWave-Cingular* ¶ 43.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*



1.2111 of the Commission's rules to Urban NC, as well as a waiver of the timing requirements of Section 24.714 in order to allow the Applicants to consummate the transaction.

As set forth above, the instant waiver request is directly on point with the *NextWave-Cingular* decision. The Urban NC litigation has followed precisely the factual pattern of NextWave in all material respects. Like NextWave, Urban NC was the high bidder for C-Block licenses in Auction 5 and F-Block licenses in Auction No. 11, and like NextWave, on October 28, 1998, Urban NC filed for protection under Chapter 11 of the Bankruptcy Code. On December 6, 2004, Urban NC filed with the Wireless Telecommunications Bureau a request for tolling relief with respect to the Licenses. Urban NC anticipates that this request, relying upon the *NextWave Tolling* decision,<sup>26</sup> will be granted shortly. Thus, in this regard also, Urban NC is similarly situated with NextWave.

Accordingly, the Applicants respectfully request grant of any waivers incidental to the Commission's consent to the instant applications.

## VI. CONCLUSION

For the reasons set forth above, the Applicants respectfully request consent to the proposed transfer of control of Urban NC to Triton, and request grant of any waivers incidental to the Commission's consent.

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<sup>26</sup> *NextWave Personal Communications Inc. and NextWave Power Partners Inc., Petition for Declaration of Broadband PCS Construction Deadline; or in the Alternative, for Waiver and Extension of First Construction Deadline*, 18 FCC Rcd 3235 (2003) ("*NextWave Tolling*").

## Exhibit 2

**TRITON PCS HOLDINGS, INC.**  
**SPECTRUM OVERLAPS – ESTIMATED COMPETITORS**

- Commercial Mobile Radio Service spectrum interests of Triton PCS Holdings, Inc. (10% or greater owned)<sup>1</sup> in Basic Trading Areas where spectrum is to be acquired from Urban Comm, assuming a prior grant of pending transfer of control applications (file nos. 0001963881 and 0001963918) relating to a spectrum swap between Triton PCS and Cingular Wireless in certain markets.

BTA Name (BTA #)	County Name	State	Expected Triton MHz Before	Urban Comm MHz Being Acquired	Total MHz After
Asheville/Hendersonville (20)	Avery	NC	30	10	40
Asheville/Hendersonville (20)	Buncombe	NC	30	10	40
Asheville/Hendersonville (20)	Cherokee	NC	30	10	40
Asheville/Hendersonville (20)	Clay	NC	30	10	40
Asheville/Hendersonville (20)	Graham	NC	30	10	40
Asheville/Hendersonville (20)	Haywood	NC	30	10	40
Asheville/Hendersonville (20)	Henderson	NC	30	10	40
Asheville/Hendersonville (20)	Jackson	NC	30	10	40
Asheville/Hendersonville (20)	Macon	NC	30	10	40
Asheville/Hendersonville (20)	Madison	NC	30	10	40
Asheville/Hendersonville (20)	McDowell	NC	30	10	40
Asheville/Hendersonville (20)	Mitchell	NC	30	10	40
Asheville/Hendersonville (20)	Swain	NC	30	10	40
Asheville/Hendersonville (20)	Transylvania	NC	30	10	40
Asheville/Hendersonville (20)	Yancey	NC	30	10	40
Burlington (62)	Alamance	NC	20	20	40
Charleston (72)	Berkeley	SC	30	10	40
Charleston (72)	Charleston	SC	30	10	40
Charleston (72)	Colleton	SC	30	10	40
Charleston (72)	Dorchester	SC	30	10	40
Charleston (72)	Georgetown	SC	55	10	65
Charleston (72)	Williamsburg	SC	30	10	40
Charlottesville (75)	Albemarle	VA	0	10	10
Charlottesville (75)	Buckingham	VA	0	10	10
Charlottesville (75)	Charlottesville City	VA	0	10	10
Charlottesville (75)	Fluvanna	VA	0	10	10
Charlottesville (75)	Greene	VA	0	10	10
Charlottesville (75)	Madison	VA	0	10	10
Charlottesville (75)	Nelson	VA	0	10	10
Charlottesville (75)	Orange	VA	0	10	10

<sup>1</sup> See 47 C.F.R. 1.2112.

BTA Name (BTA #)	County Name	State	Expected Triton MHz Before	Urban Comm MHz Being Acquired	Total MHz After
Florence (147)	Darlington	SC	30	10	40
Florence (147)	Dillon	SC	30	10	40
Florence (147)	Florence	SC	30	10	40
Florence (147)	Marion	SC	55	10	65
Fredericksburg (156)	Caroline	VA	0	10	10
Fredericksburg (156)	Fredericksburg City	VA	0	10	10
Fredericksburg (156)	King George	VA	0	10	10
Fredericksburg (156)	Spotsylvania	VA	0	10	10
Fredericksburg (156)	Westmoreland	VA	0	10	10
Goldsboro/Kinston (165)	Duplin	NC	20	10	30
Goldsboro/Kinston (165)	Greene	NC	20	10	30
Goldsboro/Kinston (165)	Lenoir	NC	20	10	30
Goldsboro/Kinston (165)	Wayne	NC	20	10	30
Greenville/Washington (176)	Beaufort	NC	20	10	30
Greenville/Washington (176)	Bertie	NC	20	10	30
Greenville/Washington (176)	Hyde	NC	20	10	30
Greenville/Washington (176)	Martin	NC	20	10	30
Greenville/Washington (176)	Pitt	NC	20	10	30
Greenville/Washington (176)	Tyrrell	NC	20	10	30
Greenville/Washington (176)	Washington	NC	20	10	30
Harrisonburg (183)	Harrisonburg City	VA	0	10	10
Harrisonburg (183)	Page	VA	0	10	10
Harrisonburg (183)	Rockingham	VA	0	10	10
Harrisonburg (183)	Hardy	VA	0	10	10
Harrisonburg (183)	Pendleton	VA	0	10	10
Martinsville (284)	Henry	VA	0	10	10
Martinsville (284)	Martinsville City	VA	0	10	10
Martinsville (284)	Patrick	VA	0	10	10
Myrtle Beach (312)	Horry	SC	55	10	65
New Bern (316)	Carteret	NC	20	10	30
New Bern (316)	Craven	NC	20	10	30
New Bern (316)	Jones	NC	20	10	30
New Bern (316)	Pamlico	NC	20	10	30
Orangeburg (335)	Bamberg	SC	30	10	40
Orangeburg (335)	Calhoun	SC	30	10	40
Orangeburg (335)	Orangeburg	SC	30	10	40

BTA Name (BTA #)	County Name	State	Expected Triton MHz Before	Urban Comm MHz Being Acquired	Total MHz After
Raleigh-Durham (368)	Chatham	NC	20	20	40
Raleigh-Durham (368)	Durham	NC	20	20	40
Raleigh-Durham (368)	Franklin	NC	20	20	40
Raleigh-Durham (368)	Granville	NC	20	20	40
Raleigh-Durham (368)	Harnett	NC	20	20	40
Raleigh-Durham (368)	Johnston	NC	20	20	40
Raleigh-Durham (368)	Lee	NC	20	20	40
Raleigh-Durham (368)	Orange	NC	20	20	40
Raleigh-Durham (368)	Person	NC	20	20	40
Raleigh-Durham (368)	Vance	NC	20	20	40
Raleigh-Durham (368)	Wake	NC	20	20	40
Raleigh-Durham (368)	Warren	NC	20	20	40
Richmond/Petersburg (374)	Amelia	VA	0	10	10
Richmond/Petersburg (374)	Brunswick	VA	0	10	10
Richmond/Petersburg (374)	Charles City	VA	0	10	10
Richmond/Petersburg (374)	Charlotte	VA	0	10	10
Richmond/Petersburg (374)	Chesterfield	VA	0	10	10
Richmond/Petersburg (374)	Colonial Heights City	VA	0	10	10
Richmond/Petersburg (374)	Cumberland	VA	0	10	10
Richmond/Petersburg (374)	Dinwiddie	VA	0	10	10
Richmond/Petersburg (374)	Emporia City	VA	0	10	10
Richmond/Petersburg (374)	Essex	VA	0	10	10
Richmond/Petersburg (374)	Goochland	VA	0	10	10
Richmond/Petersburg (374)	Greensville	VA	0	10	10
Richmond/Petersburg (374)	Hanover	VA	0	10	10
Richmond/Petersburg (374)	Henrico	VA	0	10	10
Richmond/Petersburg (374)	Hopewell City	VA	0	10	10
Richmond/Petersburg (374)	King and Queen	VA	0	10	10
Richmond/Petersburg (374)	King William	VA	0	10	10
Richmond/Petersburg (374)	Lancaster	VA	0	10	10
Richmond/Petersburg (374)	Louisa	VA	0	10	10
Richmond/Petersburg (374)	Lunenburg	VA	0	10	10
Richmond/Petersburg (374)	Mecklenburg	VA	0	10	10
Richmond/Petersburg (374)	Middlesex	VA	0	10	10
Richmond/Petersburg (374)	New Kent	VA	0	10	10
Richmond/Petersburg (374)	Northumberland	VA	0	10	10
Richmond/Petersburg (374)	Nottoway	VA	0	10	10
Richmond/Petersburg (374)	Petersburg City	VA	0	10	10
Richmond/Petersburg (374)	Powhatan	VA	0	10	10
Richmond/Petersburg (374)	Prince Edward	VA	0	10	10
Richmond/Petersburg (374)	Prince George	VA	0	10	10
Richmond/Petersburg (374)	Richmond	VA	0	10	10
Richmond/Petersburg (374)	Richmond City	VA	0	10	10
Richmond/Petersburg (374)	Sussex	VA	0	10	10

BTA Name (BTA #)	County Name	State	Expected Triton MHz Before	Urban Comm MHz Being Acquired	Total MHz After
Roanoke (376)	Alleghany	VA	0	10	10
Roanoke (376)	Bath	VA	0	10	10
Roanoke (376)	Bedford	VA	0	10	10
Roanoke (376)	Bedford City	VA	0	10	10
Roanoke (376)	Botetourt	VA	0	10	10
Roanoke (376)	Buena Vista City	VA	0	10	10
Roanoke (376)	Carroll	VA	0	10	10
Roanoke (376)	Clifton Forge City	VA	0	10	10
Roanoke (376)	Covington City	VA	0	10	10
Roanoke (376)	Craig	VA	0	10	10
Roanoke (376)	Floyd	VA	0	10	10
Roanoke (376)	Franklin	VA	0	10	10
Roanoke (376)	Galax City	VA	0	10	10
Roanoke (376)	Giles	VA	0	10	10
Roanoke (376)	Grayson	VA	0	10	10
Roanoke (376)	Lexington City	VA	0	10	10
Roanoke (376)	Montgomery	VA	0	10	10
Roanoke (376)	Pulaski	VA	0	10	10
Roanoke (376)	Radford City	VA	0	10	10
Roanoke (376)	Roanoke	VA	0	10	10
Roanoke (376)	Roanoke City	VA	0	10	10
Roanoke (376)	Rockbridge	VA	0	10	10
Roanoke (376)	Salem City	VA	0	10	10
Roanoke (376)	Wythe	VA	0	10	10
Roanoke Rapids (377)	Halifax	VA	20	10	30
Roanoke Rapids (377)	Northampton	VA	20	10	30
Rocky Mount (382)	Edgecombe	NC	20	10	30
Rocky Mount (382)	Nash	NC	20	10	30
Rocky Mount (382)	Wilson	NC	20	10	30
Staunton/Waynesboro (430)	Augusta	VA	0	10	10
Staunton/Waynesboro (430)	Highland	VA	0	10	10
Staunton/Waynesboro (430)	Staunton City	VA	0	10	10
Staunton/Waynesboro (430)	Waynesboro City	VA	0	10	10
Sumter (436)	Clarendon	SC	30	10	40
Sumter (436)	Lee	SC	30	10	40
Sumter (436)	Sumter	SC	30	10	40

## Wireless Competitors in Markets Where Spectrum is to be Acquired

  Constructed Facilities\*

BTA Name (BTA #)	Cellular Block A	Cellular Block B	PCS Block A	PCS Block B	PCS Block C	PCS Block D	PCS Block E	PCS Block F	ESMR
Asheville/Hendersonville, NC (20)	Verizon	U.S. Cellular	Triton PCS	Cingular	FCC	Sprint/Airgate PCS	ALLTEL	Urban Comm <sup>4</sup>	--
Burlington, NC (62)	Verizon	ALLTEL	Triton PCS <sup>1</sup> SprintCom	Cingular	Urban Comm <sup>3</sup>	SprintCom	ALLTEL	Verizon	Nextel
Charleston, SC (72)	Verizon Triton PCS <sup>6</sup>	ALLTEL	Triton PCS Cingular	Cingular	Triton PCS Verizon T-Mobile	Sprint/Airgate PCS	ALLTEL	Urban Comm <sup>4</sup>	Nextel
Charlottesville, VA (75)	U.S. Cellular	ALLTEL	SprintCom	Cingular <sup>5</sup>	Cingular <sup>5</sup> nTelos	T-Mobile	T-Mobile	Urban Comm <sup>4</sup>	Nextel
Florence, SC (147)	Verizon Triton PCS <sup>6</sup>	ALLTEL	Triton PCS Cingular	Cingular	Triton PCS Verizon T-Mobile	Sprint/Airgate PCS	ALLTEL	Urban Comm <sup>4</sup>	Nextel
Fredericksburg, VA (156)	Cingular	Verizon	SprintCom	Cingular <sup>5</sup>	Cingular <sup>5</sup>	T-Mobile	nTelos	Urban Comm <sup>4</sup>	Nextel
Goldsboro/Kinston, NC (165)	U.S. Cellular	ALLTEL	Triton PCS Cingular	Cingular	Urban Comm <sup>2</sup>	Sprint/Airgate PCS	ALLTEL	T-Mobile	Nextel
Greenville/Washington, NC (176)	U.S. Cellular	ALLTEL	Triton PCS Cingular	Cingular	Urban Comm <sup>2</sup>	Sprint/Airgate PCS	ALLTEL	Verizon	--
Harrisonburg, VA (183)	Virginia Cellular	Verizon	SprintCom	Cingular <sup>5</sup>	T-Mobile T-Mobile/Cook Inlet	nTelos	nTelos	Urban Comm <sup>4</sup>	--
Martinsville, VA (284)	U.S. Cellular	ALLTEL	Cingular <sup>3</sup>	nTelos	FCC Cingular <sup>5</sup>	SprintCom	T-Mobile	Urban Comm <sup>4</sup>	Nextel
Myrtle Beach, SC (312)	Triton PCS <sup>6</sup>	ALLTEL	Triton PCS Cingular	Horry/Cingular	Triton PCS Verizon T-Mobile	Sprint/Airgate PCS	ALLTEL	Urban Comm <sup>4</sup>	Nextel
New Bern, NC (316)	U.S. Cellular	ALLTEL	Triton PCS Cingular	Cingular	Urban Comm <sup>2</sup>	Sprint/Airgate PCS	ALLTEL	Comscape Telecom	Nextel
Orangeburg, SC (335)	Verizon	ALLTEL	Triton PCS Cingular	Cingular	Triton PCS Verizon T-Mobile	Sprint/Airgate PCS	ALLTEL	Urban Comm <sup>4</sup>	Nextel
Raleigh-Durham, NC (368)	Verizon	ALLTEL	Triton PCS <sup>1</sup> SprintCom	Cingular	Urban Comm <sup>3</sup>	SprintCom	ALLTEL	Comscape (Kiwi)	Nextel
Richmond/Petersburg, VA (374)	ALLTEL	Verizon	Cingular <sup>5</sup>	nTelos Verizon	FCC	SprintCom	T-Mobile	Urban Comm <sup>4</sup>	Nextel
Roanoke, VA (376)	U.S. Cellular	Verizon	Cingular <sup>5</sup>	nTelos	FCC	SprintCom	T-Mobile	Urban Comm <sup>4</sup>	Nextel
Roanoke Rapids, NC (377)	U.S. Cellular	ALLTEL	Triton PCS Cingular	Cingular	Urban Comm <sup>2</sup>	Sprint/Airgate PCS	ALLTEL	Verizon	Nextel
Rocky Mount, NC (382)	U.S. Cellular	ALLTEL	Triton PCS Cingular	Cingular	Urban Comm <sup>2</sup>	Sprint/Airgate PCS	ALLTEL	Verizon	Nextel
Staunton/Waynesboro, VA (430)	Virginia Cellular	Verizon	Cingular <sup>5</sup>	nTelos Verizon	FCC Cingular <sup>5</sup>	SprintCom	T-Mobile	Urban Comm <sup>4</sup>	--
Sumter, SC (436)	Verizon	ALLTEL	Triton PCS Cingular	Cingular	Triton PCS Verizon T-Mobile	Sprint/Airgate PCS	ALLTEL	Urban Comm <sup>4</sup>	Nextel

\* Denotes active cellular licenses granted more than 18 months ago, active PCS licenses for which a construction notification has been filed, and other sources of available information; carriers that have completed construction may not be operating, and carriers that are operating may not have filed construction notices. In instances where there are multiple carriers within a license block in a particular BTA, the block is shaded if any of the carriers satisfy the criteria in the preceding sentence.

1/ Triton is providing service pursuant to a spectrum lease agreement with Cingular Wireless. An application for transfer of control of this spectrum from Cingular to Triton is pending. See file no. 0001963881.

2/ 10 MHz subject of instant application for transfer to Triton. Remaining 20 MHz to be assigned to Cellco Partnership d/b/a Verizon Wireless pursuant to pending application file number 0002007683.

3/ 20 MHz subject of instant application for transfer to Triton. Remaining 10 MHz to be assigned to Cellco Partnership d/b/a Verizon Wireless pursuant to pending application file number 0002007683.

4/ Subject of instant application for transfer to Triton.

5/ Cingular is providing service pursuant to a spectrum lease agreement with Triton. An application for transfer of control of this spectrum from Triton to Cingular is pending. See file no. 0001963918.

6/ Triton's one cellular license, KNKN557, covers Marion county, located within the Florence BTA; Georgetown county, located within the Charleston BTA; and Horry county, which constitutes the Myrtle Beach BTA.

**URBAN COMM-NORTH CAROLINA, INC.  
COMPETITIVE IMPACT STATEMENT**

Urban Comm-North Carolina, Inc. ("Urban NC") has no customers at this time and is not an active competitor in any of the markets in which the licenses are being transferred. Therefore, there will not be a loss of an active competitor in the markets in which the licenses are being transferred and no consumer will experience a loss of any existing service offering. Competition will be enhanced in all of the markets, because Triton will bring additional competition into these markets.



**SETTLEMENT AGREEMENT APPROVAL**

On March 24, 2005, at a hearing scheduled for that purpose, the Bankruptcy Court granted the Debtors' "Application for an order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Approving the Terms and Conditions of Debtors' Proposed Settlement Agreement with the Federal Communications Commission."

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Charles E. Simpson (CES-2130)

Attorneys for Urban Communicators PCS Limited  
Partnership, et al., Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re: : Chapter 11 Case  
: Nos. 98-B-47996,  
: 98-B-47997 and  
URBAN COMMUNICATORS PCS LIMITED : 98-B-10086 (REG)  
PARTNERSHIP, et al., :  
: JOINTLY ADMINISTERED  
Debtors. :  
:-----x

**ORDER APPROVING TERMS AND CONDITIONS OF  
THE PROPOSED STOCK PURCHASE AGREEMENT,  
BREAK-UP FEE, NON-SOLICITATION COVENANT,  
GOOD FAITH DEPOSIT TERMS AND CONDITIONS  
AND TERMINATION FEE TERMS AND CONDITIONS**

Upon the Application of Urban Communicators PCS Limited Partnership, et al., Debtors-in-Possession (the "Debtors"), for an Interim Relief Order, pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Rules 2002(a)(2), 4001(d)(1)(B), 6004(F) and 9006(b) of the Federal Rules of Bankruptcy Procedure, approving and authorizing: (i) the terms and conditions of the proposed Stock Purchase Agreement and the Debtors' execution, delivery and performance of the proposed Stock Purchase Agreement; (ii) the terms and conditions of the proposed Escrow Agreement and the Debtors' execution, delivery and performance of the proposed Escrow Agreement; (iii) the terms and conditions of the Break-Up Fee, including, without

limitation, the terms and conditions upon which Purchaser may be paid the Break-Up Fee; (iv) the terms and conditions of the proposed Good Faith Deposit, including the terms and conditions upon which the Good Faith Deposit shall be returned to the Purchaser; (v) the terms and conditions of the proposed Non-Solicitation Covenant; (vi) the terms and conditions of the Termination Fee, including without limitation, the terms and conditions upon which the Purchaser may be paid the Termination Fee; and, (vii) such other relief as the Court deems just and proper (the "Motion"); it appearing that adequate and proper notice of the hearing on the Application having been given; the terms and conditions of the Stock Purchase Agreement, including the Break-Up Fee<sup>1</sup>, Non-Solicitation Covenant, Good Faith Deposit and Termination Fee having been negotiated in an arm's length transaction and agreed upon by the Debtors in good faith and within the Debtors' business judgment; the Court having heard Charles E. Simpson, Esq., of Windels Marx Lane & Mittendorf, LLP, attorney's for the Debtors, in support of the Motion; the Court having reviewed the statement of Gabriel Capital L.P. reserving its rights with respect to the Application and the relief the Debtors seek therein; any and all parties having been given the opportunity to be heard; upon due deliberation thereon, and good and sufficient cause having been shown, it is hereby:

**ORDERED, ADJUDGED AND AGREED**

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<sup>1</sup> Capitalized and defined terms not otherwise defined in this Order shall have the meaning ascribed thereto in the Stock Purchase Agreement.

1. The Motion is hereby in all respects **GRANTED**,  
**subject to the terms and conditions set forth herein.**

2. The terms and conditions of the proposed Stock Purchase Agreement and the Debtors' execution, delivery and performance of the proposed Stock Purchase Agreement be, and hereby is, authorized and approved, subject to the terms of and performance under the FCC Settlement and to the Federal Communications Commission's (the "FCC") regulatory powers and process with respect to transfer and disposition of license assignment applications, including any related requests for relief under 47 C.F.R. §§24.714 and 1.2111, and any other applicable FCC rules and regulations.

3. The terms and conditions of the proposed Escrow Agreement as set forth in the Stock Purchase Agreement and the Debtors' execution, delivery and performance of the proposed Escrow Agreement, be, and hereby is, authorized and approved.

4. The terms and conditions of the Break-Up Fee as set forth in the Stock Purchase Agreement, including, without limitation, the terms and conditions upon which Purchaser shall be paid the Break-Up Fee as an allowed expense of administration in this Chapter 11 case, be, and hereby is, authorized and approved.

5. The terms and conditions of the Good Faith Deposit as set forth in the Stock Purchase Agreement, including, without limitation, the terms and conditions upon which the Good Faith Deposit shall be returned to the Purchaser, be, and hereby is, authorized and approved.

6. The terms and conditions of the Non-Solicitation Covenant in the Stock Purchase Agreement, be, and hereby is, authorized and approved, provided, however, that nothing in the Non-Solicitation Covenant shall be construed to limit the Debtors' obligation to consider any Alternative Transaction or Alternative Plan consistent with their fiduciary duties to stakeholders.

7. The terms and conditions of the Termination Fee as set forth in the Stock Purchase Agreement, including, without limitation, the terms and conditions upon which the Purchaser shall be paid the Termination Fee as an expense of administration in this Chapter 11 case, be, and hereby is authorized and approved.

8. Nothing in this order or Exhibit C to the Stock Purchase Agreement shall be preclusive or prejudicial as to the amount, priority or character of any claim against any Debtor that is held by (i) the FCC or (ii) by Gabriel Capital L.P., its affiliates and managed entities, or its predecessors or

successors in interest (collectively, "Gabriel"). In the event Gabriel's claim is determined in an amount different than that set forth in Exhibit C to the Stock Purchase Agreement, such result shall not constitute a breach of the Stock Purchase Agreement or a failure of any representation or warranty therein and shall not entitle the Debtors or the Purchaser to terminate the Stock Purchase Agreement, provided, however, upon the Closing of the Stock Purchase Agreement Gabriel shall have no Claim or Lien against the Purchaser, Company, the Company's assets or the equity in the Company provided, further, that Gabriel's existing Claims and Liens shall attach to the cash proceeds of the Stock Purchase Agreement with the same validity, enforceability, priority, force and effect as such Claims and Liens had prior to the consummation of the transaction contemplated by the Stock Purchase Agreement. In the event FCC's claim is determined in an amount different than that set forth in Exhibit C to the Stock Purchase Agreement, such result shall not constitute a breach of the Stock Purchase Agreement or a failure of any representation or warranty therein, and shall not entitle the Debtors or the Purchaser to terminate the Stock Purchase Agreement, provided, however, that (i) the foregoing shall not modify, amend, alter or otherwise affect Section 10(a)(iv) of the Closing Conditions of the Stock Purchase Agreement, which shall remain in full force and effect, and (ii)

upon the Closing of the Stock Purchase Agreement and receipt by the FCC of all amounts due to the FCC under the terms of the FCC Settlement, the FCC shall have no Claim or Lien against the Purchaser, Company, the Company's assets or the equity in the Company provided, further, that FCC's existing Claims shall attach to the cash proceeds of the Stock Purchase Agreement with the same validity, enforceability, priority, force and effect as such Claims had prior the consummation of the transaction contemplated by the Stock Purchase Agreement.

9. The FCC's rights and powers to take any action pursuant to its regulatory authority, including without limitation its authority under the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder, are fully preserved, and nothing contained in this order, the Stock Purchase Agreement or any ancillary document contemplated therein shall prescribe or constrain the FCC's exercise of its regulatory power and authority.

Dated: New York, New York  
December 1, 2004

S/ Robert E. Gerber  
United States Bankruptcy Judge

## SETTLEMENT AGREEMENT

This agreement (this "Agreement"), dated March 14, 2005 is by and between Urban Communicators PCS Limited Partnership, Debtor-in-Possession; Urban Comm-Mid-Atlantic, Inc., Debtor-in-Possession, and Urban Comm-North Carolina, Inc., Debtor-in-Possession (individually or collectively, "Urban Comm" or the "Debtors"), on the one hand, and the Federal Communications Commission (the "FCC"), on the other hand (Urban Comm and the FCC are collectively referred to as the "Parties" or individually as a "Party"). Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the meanings set forth in section 1 below.

### RECITAL

WHEREAS, on October 28, 1998 (the "Petition Date"), Urban Comm-North Carolina, Inc., Debtor-in-Possession ("UC-NC") filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and

WHEREAS, on November 5, 1998, Urban Communicators PCS Limited Partnership ("UC-LP") and Urban Comm-Mid-Atlantic, Inc. ("UC-MA") filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court; and

WHEREAS, on or about February 17, 1999, UC-NC instituted an adversary proceeding against the FCC in the Bankruptcy Court ("Adversary Proceeding"); and

WHEREAS, on or about May 28, 1999, the FCC filed a proof of claim in the Bankruptcy Court against UC-NC, asserting a secured claim in the amount of \$79,673,661 ("Proof of Claim"), representing UC-NC's outstanding obligation to the FCC for the conditional grant of licenses to operate broadband personal communications services (the "Licenses"); and

WHEREAS, on or about October 22, 2004, Debtors filed an application with the Bankruptcy Court for an interim order authorizing and approving, *inter alia*, the Debtors to enter into a proposed stock purchase agreement (the "Triton Stock Purchase Agreement") with Triton PCS Holdings, Inc. ("Triton") with respect to the sale and transfer of Urban Comm's rights and interest in the stock of UC-NC and thereby transferring certain of the Licenses as set forth on Exhibit B attached hereto (the "Triton Licenses"); and

WHEREAS, on or about December 1, 2004, the Bankruptcy Court entered an Order Approving the Terms and Conditions of the Proposed Stock Purchase Agreement, Break-Up Fee, Non-Solicitation Covenant, Good Faith Deposit Terms and Conditions and Termination Fee Terms and Conditions; and

WHEREAS, on or about December 22, 2004, UC-NC entered into an Agreement to Purchase FCC Licenses ("Verizon Sale Agreement"), with Cellco Partnership, d/b/a Verizon Wireless ("Verizon"), for the transfer of UC-NC's rights and interests in certain of the Licenses as set forth on Exhibit B attached hereto (the "Verizon Licenses"); and



WHEREAS, on or about January 24, 2005, the Bankruptcy Court entered an Order Authorizing and Approving the Sale of Certain PCS Licenses to Cellco Partnership d/b/a Verizon Wireless, Free and Clear of Liens and Encumbrances, pursuant to the Verizon Sale Agreement; and

WHEREAS, this Agreement is intended to resolve any and all outstanding claims, issues and disputes based on facts and circumstances existing as of the date hereof, whether or not such claims, issues and disputes have been advanced or are currently outstanding between the Parties with respect to the Licenses, the Adversary Proceeding, the Proof of Claim, Urban Comm's Chapter 11 cases (the "Chapter 11 Cases"), and any actions taken with respect to the Licenses or within the Chapter 11 Cases (collectively, the "Urban Comm Related Matters"), subject to Bankruptcy Court approval and the Parties' rights under this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and the mutual representations, covenants, agreements and conditions contained herein, the Parties hereby agree as follows:

1. Defined Terms. The following terms have the following meanings when used herein with initial capital letters:

(a) "Adversary Proceeding" - has the meaning set forth in the recitals.

(b) "Affiliate" - shall mean with respect to any Person, any Person that directly or indirectly: (i) controls; (ii) is controlled by; or (iii) is under common control with such Person. Without limiting the generality of the foregoing, Affiliate shall include any Person meeting the definition of "Affiliate" in either (x) Section 101(2) of the Bankruptcy Code or (y) Section 12b-2 of the rules and regulations under the Securities Exchange Act of 1934, as amended.

(c) "Agreement" - has the meaning set forth in the preamble.

(d) "Agreement Effectiveness Date" - has the meaning set forth in section 12.

(e) "Alternative Cash Payment" - means a cash payment for a License(s) made directly to the FCC in the amount set forth in column A of Exhibit C to this Agreement with respect to such License(s), together with all interest that has accrued with respect to such License(s) from and including January 1, 2005, through and including the date of the Closing of the transaction involving that License, or, if the License is sold pursuant to the Bankruptcy Court Auction, the date that is six months from the date upon which the Bankruptcy Court Auction concludes, whichever is earlier, at the per diem interest amount set forth in column B of Exhibit C with respect to each License.

- (f) "Alternative Transaction" - has the meaning set forth in section 4.
- (g) "Alternative Transaction Licenses" - has the meaning set forth in section 4.
- (h) "Bankruptcy Code" - means title 11 of the United States Code.
- (i) "Bankruptcy Court" - has the meaning set forth in the recitals.
- (j) "Bankruptcy Court Auction" - has the meaning set forth in section 4.
- (k) "Bidding Procedures Order" - means a Final Order of the Bankruptcy Court setting forth the procedures that will govern the Bankruptcy Court Auction.
- (l) "Business Day" - means any day other than Saturday, Sunday and any day that is a federal holiday or a day on which banking institutions in New York, New York are authorized by federal law to close.
- (m) "Chapter 11 Cases" - has the meaning set forth in the recitals.
- (n) "Closing" - means the closing of a Sale.
- (o) "Confirmation Order" - means the order of the Bankruptcy Court confirming a Plan in the Chapter 11 Cases.
- (p) "Debtors" - has the meaning set forth in the preamble.
- (q) "FCC" - has the meaning set forth in the preamble.
- (r) "Final Order" - shall mean an action taken or order issued by any foreign, federal, state, local or other governmental authority or regulatory body, including, without limitation, the Bankruptcy Court and the FCC (a "Governmental Body"), as applicable, as to which: (i) no request for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute, rule or regulation, such deadline has passed, including any extensions thereof; (ii) no appeal is pending and the time for filing any such appeal has passed; and (iii) the Governmental Body does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed.
- (s) "Governmental Body" - has the meaning set forth in the definition of Final Order above.
- (t) "Licenses" - has the meaning set forth in the recitals and are listed on Exhibit A.

- (u) "Marketing Period" – has the meaning set forth in section 4.
- (v) "Minimum Bid" – means an amount equal to the amount of the Alternative Cash Payment with respect to each License.
- (w) "Other Claimants" – has the meaning set forth in section 6.
- (x) "Party" or "Parties" – has the meaning set forth in the preamble.
- (y) "Person" – means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or governmental entity (whether foreign, federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).
- (z) "Petition Date" – has the meaning set forth in the recitals.
- (aa) "Plan" – means a plan of reorganization or liquidation confirmed by order of the Bankruptcy Court in the Chapter 11 Cases.
- (bb) "Proof of Claim" – has the meaning set forth in the recitals and as set forth on Exhibit D attached hereto.
- (cc) "Purchaser" – means any Person who enters into a Sale Agreement with Urban Comm for the Transfer of one or more of the Licenses.
- (dd) "Remaining Licenses" – has the meaning set forth in section 4.
- (ee) "Sale" – means the Transfer of Urban Comm's rights and interests in any of the Licenses to a Purchaser.
- (ff) "Sale Agreement" – means any agreement executed by Urban Comm that provides, directly or indirectly, for the Transfer of Urban Comm's rights and interests in any of the Licenses to a Purchaser.
- (gg) "Sale Order" – means a Final Order of the Bankruptcy Court approving a Sale, whether in the form of a Confirmation Order or otherwise.
- (hh) "Settlement Approval Order" – means a Final Order of the Bankruptcy Court, entered after notice and a hearing in accordance with Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving this Agreement and incorporating the terms hereof without modification.
- (ii) "Transfer" – means the direct or indirect sale, transfer, pledge, grant of lien, assignment, lease or any other disposition, whether by sale, merger, auction, tender offer, joint venture, purchase of stock or any other form of transaction, and whether in one or a series of related transactions.

2. (jj) "Triton Cash Payment" – has the meaning set forth in section 2.
- (kk) "Triton Licenses" – has the meaning set forth in the recitals.
- (ll) "Triton Stock Purchase Agreement" – has the meaning set forth in the recitals.
- (mm) "Triton Sale" – means the Sale of all of the Triton Licenses to Triton pursuant to the Triton Stock Purchase Agreement.
- (nn) "Urban Comm" – has the meaning set forth in the preamble.
- (oo) "Urban Comm Claimants" – has the meaning set forth in section 6.
- (pp) "Urban Comm Related Matters" – has the meaning set forth in the recitals.
- (qq) "Verizon Cash Payment" – has the meaning set forth in section 3.
- (rr) "Verizon Licenses" – has the meaning set forth in the recitals.
- (ss) "Verizon Sale" – means the Sale of all of the Verizon Licenses to Verizon pursuant to the Verizon Sale Agreement.
- (tt) "Verizon Sale Agreement" – has the meaning set forth in the recitals.
2. Cash Payment with Respect to Sale of Triton Licenses. At the Closing of the Triton Sale, and as a condition of FCC approval of any Transfer of the Triton Licenses, Urban Comm shall require that Triton pay directly to the FCC \$49,937,276.86, plus all interest accruing from and including January 1, 2005, through and including the date of Closing at the per diem amounts set forth in Exhibit B (collectively, the "Triton Cash Payment"). Notwithstanding the foregoing, provided that Urban Comm and Triton file a complete application with the FCC seeking regulatory approval for the Transfer of the Triton Licenses, including any necessary requests for regulatory waivers and other relief, prior to March 22, 2005, and the FCC has not taken dispositive action on such application for regulatory approval of the Transfer of the Triton Licenses by June 7, 2005, then the interest described in the preceding sentence shall not accrue for the period from and including June 8, 2005, until and including the date upon which the FCC acts upon the Transfer application and such action becomes a Final Order. The Triton Cash Payment shall be free and clear of any liens, claims, encumbrances, rights or interests, and shall in any event be made prior to any distribution to Urban Comm of the balance of the sale proceeds.
3. Cash Payment with Respect to Sale of Verizon Licenses. At the Closing of the Verizon Sale, and as a condition of FCC approval of any Transfer of the Verizon

Licenses, Urban Comm shall require that Verizon pay directly to the FCC \$43,676,775.09, plus all interest accruing from and including January 1, 2005, through and including the date of Closing at the per diem amounts set forth in Exhibit B (collectively, the "Verizon Cash Payment"). Notwithstanding the foregoing, provided that Urban Comm and Verizon file a complete application with the FCC seeking regulatory approval for the Transfer of the Verizon Licenses, including any necessary requests for regulatory waivers and other relief, prior to March 22, 2005, and the FCC has not taken dispositive action on such application for regulatory approval of the Transfer of the Verizon Licenses by June 7, 2005, then the interest described in the preceding sentence shall not accrue for the period from and including June 8, 2005, until and including the date upon which the FCC acts upon the Transfer application and such action becomes a Final Order. The Verizon Cash Payment shall be free and clear of any liens, claims, encumbrances, rights or interests, and shall in any event be made prior to any distribution to Urban Comm of the balance of the sale proceeds.

4. Disposition of Unsold Licenses.

- (a) In the event that either or both the Verizon Sale Agreement and the Triton Stock Purchase Agreement terminate(s), Urban Comm shall have one year from the date of written notice of such termination or from the date that termination occurs pursuant to the relevant agreement, whichever is earlier, ("Marketing Period") (i) to enter into one or more transactions (each, an "Alternative Transaction") that proposes to Transfer one or more of the Licenses that were the subject of the terminated transaction ("Alternative Transaction Licenses"), (ii) to secure a Sale Order approving any such Alternative Transaction, and (iii) to file an application with the FCC for regulatory approval of any such Alternative Transaction. Debtors agree that they shall advise the FCC, in writing, promptly and, in any event, within one Business Day of the termination of either the Triton Stock Purchase Agreement or the Verizon Sale Agreement, and attach a copy of any termination notice, agreement or other termination instrument.
- (b) Any Alternative Transaction License that is not the subject of an Alternative Transaction in accordance with the provisions of Section 4(a) hereof by the end of the Marketing Period shall be subject to a public auction in the Bankruptcy Court in accordance with section 363 of the Bankruptcy Code, which auction must be held within 60 days of the end of the Marketing Period ("Bankruptcy Court Auction"). The FCC and Urban Comm shall jointly submit for Bankruptcy Court approval proposed procedures governing the Bankruptcy Court Auction.
- (c) Any Bidding Procedures Order shall provide, *inter alia*, that (i) no License shall be sold in the Bankruptcy Court Auction for less than the Minimum Bid for each License; (ii) any License for which no Minimum Bid has been submitted shall, at the conclusion of the Bankruptcy Court Auction, be cancelled, rescinded and deemed returned to the FCC pursuant to section 4(e) hereof; (iii) the Transfer of Licenses pursuant to the Bankruptcy Court

Auction will be contingent upon, and shall not proceed to Closing unless and until the issuance of FCC regulatory approval of such Transfer; and (iv) Urban Comm shall file with the FCC an application for regulatory approval of any Sale resulting from the auction within one week following the close of the auction.

- (d) In the event that License(s) are Transferred pursuant to either an Alternative Transaction or a Bankruptcy Court Auction, Urban Comm shall require that the Purchaser pay directly to the FCC an Alternative Cash Payment at the Closing of, and as a condition of FCC approval of, any Transfer of such License(s). The Alternative Cash Payment shall be free and clear of any liens, claims, encumbrances, rights or interests, and shall in any event be made prior to any distribution to Urban Comm of the balance of the sale proceeds.
- (e) Any Alternative Transaction License that has not been Transferred pursuant to an Alternative Transaction or Bankruptcy Court Auction (the "Remaining Licenses") shall be, without any further action by Urban Comm and the FCC, including also, but not limited to, any further approval by the Bankruptcy Court, cancelled, rescinded and returned to the FCC, and neither Urban Comm, the Urban Comm Claimants, the Other Claimants, nor any other Person shall have any claim, liens, rights, or interest in or with respect to the returned Licenses, the spectrum underlying same or any proceeds thereof. The return to the FCC of the Remaining Licenses shall constitute full satisfaction of the FCC's Proof of Claim with respect to such Remaining License(s).

5. **Transfer of Licenses Contingent Upon Receipt of FCC Regulatory Approval and Direct Payment.** The Confirmation Order, any Sale Order (if different than the Confirmation Order), any Bidding Procedures Order and the Settlement Approval Order shall provide, in a manner reasonably acceptable to the FCC, that no Transfer of any rights and interests of any UrbanComm entity in any of the Licenses shall take place prior to (i) the issuance of FCC regulatory approval and, with respect to the FCC's regulatory approval, notwithstanding anything herein to the contrary, the FCC's regulatory authority, including without limitation its authority under the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder, are fully preserved, and nothing contained in this Agreement, any Confirmation Order, any Sale Order (if different than the Confirmation Order), any Bidding Procedures Order, or any ancillary document contemplated therein shall prescribe or constrain the FCC's exercise of its regulatory authority; and (ii) the receipt by the FCC of the applicable direct cash payments referenced in sections 2, 3 and 4 hereof.

6. **Mutual Releases and Waivers.**

- (a) **Urban Comm.** Upon the Agreement Effectiveness Date, Urban Comm, for itself and on behalf of any party or person (including, without limitation, any past or present, direct or indirect member, stockholder, owner, and affiliate thereof and each past and present, direct or indirect, officer, director,

manager, partner, principal, agent, servant, employee, representative, advisor, attorney or creditor) claiming through Urban Comm or by reason of any damage to Urban Comm and/or damage resulting from affiliation or in connection with Urban Comm (the "Urban Comm Claimants") and all past or present creditors, equity and other interestholders (the "Other Claimants"), forever release, waive and discharge as against the FCC and/or the United States and each and every past and present, direct or indirect principal, agent, servant, staff, employee, representative, advisor and attorney of the FCC and/or the United States any and all claims, obligations, suits, judgments, liens, damages, demands, debts, rights, interests, causes of actions, liabilities, losses, costs and expenses, of any kind, character or nature whatsoever, whether liquidated or unliquidated, direct or derivative, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or which the Urban Comm Claimants or the Other Claimants believe to now exist, or hereafter arising in law, equity and otherwise, with respect to the Urban Comm Related Matters, that are based in whole or in part on any act, commission, omission, transaction, or other occurrence or circumstance existing or occurring prior to the date of entry of the Settlement Approval Order, except for Urban Comm's rights under this Agreement. As set forth in section 12 below, it is a condition precedent to the effectiveness of this Agreement that the FCC and the United States be released, to the same extent as the foregoing Urban Comm release, from all claims, if any, held by the Other Claimants relating to or arising from the Urban Comm Related Matters on any basis; this condition precedent shall be deemed conclusively established upon the date any order approving this Agreement and containing these releases becomes a Final Order. Urban Comm shall provide notice of the settlement embodied in this Agreement (including the proposed releases of the FCC and the United States contained herein) to (i) all creditors of the Urban Comm estates; (ii) all equity and other interestholders of record; and (iii) all parties requesting notice in these Chapter 11 Cases.

- (b) FCC. Upon the Agreement Effectiveness Date, the FCC and the United States, for itself and on behalf of each and every past and present, direct or indirect, principal, agent, servant, staff, employee, representative, advisor and attorney of the FCC and the United States, forever release, waive and discharge as against Urban Comm and each and every past and present, direct or indirect, member, stockholder, owner, and affiliate thereof and each past and present, direct or indirect, officer, director, manager, partner, principal, agent, servant, employee, representative, advisor, attorney or creditor of Urban Comm, the Urban Comm Claimants and the Other Claimants, any and all claims, obligations, suits, judgments, liens, damages, demands, debts, rights, interests, causes of action, liabilities, losses, costs and expenses, of any kind, character or nature whatsoever, whether liquidated or unliquidated, direct or derivative, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or which the FCC and/or the United States believe to now exist, or hereafter arising in law, equity and otherwise, with respect to the Urban Comm Related Matters, that are based in whole or in part on any act, commission, omission, transaction or other

occurrence or circumstance existing or occurring prior to the date of entry of the Settlement Approval Order, on any basis, except that the FCC and the United States specifically reserve their rights with respect to (x) federal taxes or enforcement of the criminal, environmental, securities, fraud, labor, employment (including ERISA) or antitrust laws of the United States, (y) any action by the FCC pursuant to its regulatory authority over Urban Comm as an FCC licensee (or former licensee) of the Licenses, including without limitation, its authority under the Communications Act of 1934, as amended, and the FCC rules, regulations, policies and decisions, and (z) any rights under this Agreement.

7. **Inconsistent Agreements.** Neither Urban Comm nor the FCC shall seek to confirm or be party to any Plan or other proceeding that contains any terms inconsistent with, or that would impair or interfere with any Party's rights or obligations under this Agreement, including, without limitation, the provisions of paragraphs 4 and 15 herein. Urban Comm shall not enter into or suffer to exist any transaction, agreement or Transfer that contains terms inconsistent with or that would impair or interfere with Urban Comm's obligations or the FCC's rights under this Agreement.
8. **Representations, Warranties and Covenants.** Urban Comm represents and warrants that, subject to Bankruptcy Court approval, (a) Urban Comm has the right, power, legal capacity and authority to execute and deliver this Agreement, (b) this Agreement has been duly authorized by all necessary corporate action and (c) this Agreement has been duly executed and delivered by Urban Comm.
9. **Sales Contingent upon Approval of the Settlement Agreement.** The Verizon and Triton Sales are contingent upon and shall not proceed to Closing unless and until there is an entry of a Settlement Approval Order that has become a Final Order. Notwithstanding anything to the contrary herein, in particular sections 12 and 13 hereof, this provision shall become binding upon the Parties upon execution of this Agreement.
10. **Reservation of Rights.** Subsequent to the Settlement Approval Order becoming a Final Order, and upon any Sale Order becoming a Final Order, the FCC shall undertake to review any request filed by Urban Comm and/or the Purchaser (including but not limited to any request related to the payment requirements of 47 C.F.R. §§1.2111 and 24.714) arising in connection with the Transfer that is the subject of the Sale Order. This Agreement does not constitute approval of any such request, however, nor does this Agreement guarantee FCC approval of any such request. In particular, without limitation of the foregoing, nothing in this Agreement shall be interpreted to constitute or guarantee FCC approval of the Transfer of any License(s). The Parties further acknowledge and agree that this Agreement does not limit in any respect, and the FCC expressly reserves, the FCC's exercise of its regulatory powers and process with respect to the Licenses, including, without limitation, with respect to any applications to transfer, assign, lease or dispose of any rights or interests in any License and any related requests for relief, which may be filed by Urban Comm and/or any other party in interest subsequent hereto.



11. **Adversary Proceeding.** The Settlement Approval Order shall provide that the Adversary Proceeding is dismissed with prejudice, with respect to the causes of action stated therein, without costs or attorney's fees to any Party.
12. **Conditions to Effectiveness of this Agreement.** This Agreement shall not become effective unless and until all of the following conditions precedent have been met: (i) a Settlement Approval Order is entered that contains the releases in section 6 above, which are binding upon all releasing Parties set forth herein and therein, including without limitation, the Other Claimants, covering all claims relating to the Urban Comm Related Matters, if any, held by the Other Claimants; (ii) the Settlement Approval Order has become a Final Order; and (iii) the Parties have received all appropriate and necessary approvals by the United States Department of Justice of the settlement proposed in this Agreement. The first date upon which all of the conditions set forth in this section have been met is the "Agreement Effectiveness Date."
13. **Binding Agreement.** This Agreement is binding upon the occurrence of the Agreement Effectiveness Date. This Agreement shall be binding upon Urban Comm's successors and assigns.
14. **Further Assurances.** Urban Comm agrees that in connection with and as a condition of any Transfer of its rights and interests in any License to any of its parent, subsidiary, Affiliate, or successor entities, each such parent, subsidiary, Affiliate, or successor entity shall, or Urban Comm shall cause each such parent, subsidiary, Affiliate or successor entity to agree in writing to be bound by the terms of this Agreement as if it were a Party to this Agreement and shall forward promptly a copy of such agreement to the FCC.
15. **Additional Consideration.** Notwithstanding anything to the contrary contained herein, in the event that Urban Comm receives a letter of intent or enters into a term sheet or Sale Agreement for the Transfer of Licenses pursuant to which Urban Comm will receive consideration different from, or in excess of, the consideration outlined in the Verizon Sale Agreement or the Triton Stock Purchase Agreement, the FCC shall be given notice in writing and shall have the option of determining, within 10 Business Days from the date that it is notified in writing of a change in the consideration and in the exercise of its sole discretion, that the cash payments referenced in sections 2, 3 and 4 of this Agreement do not constitute sufficient consideration for its claims in the Licenses. If the FCC makes such a determination, (i) the Parties shall negotiate in good faith the allocation to the FCC of additional cash proceeds from the Sale of the Licenses; and (ii) the amount due and owing to the FCC under sections 2, 3 and 4 of this Agreement shall be automatically amended to include any additional negotiated amount. Debtors agree that they shall promptly, and in any event within one Business Day, advise the FCC, in writing, of any and all changes to the consideration to be paid for any of the Licenses.
16. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

17. **Notice.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of service if served personally on the Party to whom notice is to be given; (b) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and telephonic confirmation of receipt is obtained promptly after completion of transmission; or (c) on the day after delivery to Federal Express or similar overnight courier service, prepaid and properly addressed, to the Party as follows:

(a) If to Urban Comm:

Urban Communicators PCS Limited  
Partnership  
11 Penn Plaza, 16<sup>th</sup> Floor  
New York, New York 10018  
Attn: Mr. Sydney L. Small

With a copy to:

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Charles E. Simpson, Esq.

(b) If to the FCC:

United States Attorney's Office,  
S.D.N.Y.,  
Civil Division  
86 Chambers St. 3<sup>rd</sup> Floor  
New York, NY 10007  
Attn: Jeannette A. Vargas & David S.  
Jones  
Tel: (212) 637-2678  
Facsimile: (212) 637-2702

With a hard copy and facsimile copy  
to:

Federal Communications Commission  
General Counsel  
Office of the General Counsel  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
Tel: (202) 418-1700  
Facsimile: (202) 418-2822

Federal Communications Commission  
Managing Director  
Office of Managing Director  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
Tel: (202) 418-1919  
Facsimile: (202) 418-2808

18. **Counterparts.** This Agreement may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date set forth above by their authorized representatives as indicated below.

**URBAN COMMUNICATORS  
PCS LIMITED PARTNERSHIP**

**URBAN COMM-NORTH CAROLINA  
INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**URBAN COMM-MID ATLANTIC, INC.**

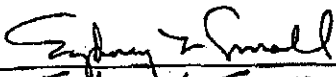
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**FEDERAL COMMUNICATIONS  
COMMISSION  
David N. Kelley  
United States Attorney For The  
Southern District Of New York**

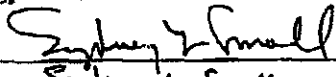
By: Jeannette A. Vargas  
Assistant U.S. Attorney

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date set forth above by their authorized representatives as indicated below.

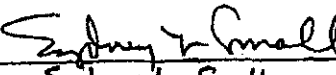
**URBAN COMMUNICATORS  
PCS LIMITED PARTNERSHIP**

  
By: Sydney L. Small  
Its: Chairman and Chief Executive Officer

**URBAN COMM-NORTH CAROLINA  
INC.**

  
By: Sydney L. Small  
Its: President and Chief Executive Officer

**URBAN COMM-MID ATLANTIC, INC.**

  
By: Sydney L. Small  
Its: President and Chief Executive Officer

**FEDERAL COMMUNICATIONS  
COMMISSION**

David N. Kelley  
United States Attorney For The  
Southern District Of New York

\_\_\_\_\_  
By: Jeannette A. Vargas  
Assistant U.S. Attorney

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date set forth above by their authorized representatives as indicated below.

URBAN COMMUNICATORS  
PCS LIMITED PARTNERSHIP  
CAROLINA

URBAN COMM-NORTH  
INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

URBAN COMM-MID ATLANTIC, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

FEDERAL COMMUNICATIONS  
COMMISSION  
David N. Kelley  
United States Attorney For The  
Southern District Of New York

  
By: Jeannette A. Vargas  
Assistant U.S. Attorney